

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.9900 Tax Shelter Voluntary Compliance Program
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TITLE 86: REVENUE

**PART 100
INCOME TAX**

SUBPART DD: MISCELLANEOUS

Section 100.9900 Tax Shelter Voluntary Compliance Program

- a) Section 35-5(a) of the Tax Shelter Voluntary Compliance Law [35 ILCS 20/35-5(a)] provides that the Department *shall establish and administer a tax shelter Voluntary Compliance Program as provided in this Section for eligible taxpayers subject to tax under the Illinois Income Tax Act. The tax shelter voluntary compliance program shall be conducted from October 15, 2004 to January 31, 2005 and shall apply to tax liabilities under Section 201 of the Illinois Income Tax Act attributable to the use of tax avoidance transactions for taxable years beginning before January 1, 2004.* The Voluntary Compliance Program provides for abatement of penalties that would otherwise be imposed on underpayment or underreporting of Illinois income tax liabilities attributable to participation in tax shelters. The Tax Shelter Voluntary Compliance Law directs the Department to *adopt rules, issue forms and instructions, and take such other actions as it deems necessary to implement the provisions of the Voluntary Compliance Program.*
- b) Definitions. For purposes of this Section:
 - 1) Tax Avoidance Transaction. Section 35-10 of the Tax Shelter Voluntary Compliance Law [35 ILCS 20/35-10] provides that "tax avoidance transaction" means any *plan or arrangement devised for the principal purpose of avoiding federal income tax. Tax avoidance transactions include, but are not limited to, "listed transactions" as defined in Treasury Regulations Section 1.6011-4(b)(2).*
 - 2) Eligible Liability
 - A) "Eligible Liability" means the excess, if any, of:
 - i) the Illinois income tax liability for a taxable year properly computed without allowing the net tax benefits of any tax avoidance transaction over; or
 - ii) the Illinois income tax liability for that taxable year properly computed allowing the tax benefits of any tax avoidance transactions in which the taxpayer participated.
 - B) The Illinois income tax liabilities under subsection (b)(2)(A)(i) shall be computed without allowing the net tax benefits of any tax avoidance transaction for the taxable year at issue, whether or not such benefits are ultimately determined to be allowable and without allowing any benefits in the taxable year at issue that result from tax avoidance transactions in

which the taxpayer participated in other tax years, such as, for example, by increasing any Illinois net loss or credit available to carry over into the taxable year at issue.

- 3) Voluntary Compliance Program Period. The "Voluntary Compliance Program Period" is October 15, 2004 through January 31, 2005, inclusive.
- c) Participation in the Voluntary Compliance Program. Participation in the Voluntary Compliance Program is made separately for each taxable year. In order to participate in the Voluntary Compliance Program for a taxable year, a taxpayer must, during the Voluntary Compliance Program Period:
- 1) File Form VCP-1, Voluntary Compliance Participation Agreement, with an amended return reporting Illinois net income and tax for the taxable year, computed without regard to any tax avoidance transactions affecting Illinois net income for that taxable year.
 - A) Any taxpayer who, as a result of participating in a tax avoidance transaction, determined that it had no Illinois income tax liability for a taxable year therefore chose not to file a return for that taxable year may participate in the Voluntary Compliance Program by filing an original return for that taxable year and reporting its Illinois net income and tax for the taxable year, computed without regard to any tax avoidance transactions affecting Illinois net income or tax for that taxable year.
 - B) A trust, estate, exempt organization, partnership or Subchapter S corporation shall file a Form IL-843, Amended Return or Notice of Change in Income, with a revised return in the proper form.
 - C) A partnership or Subchapter S corporation may file a composite return for that taxable year on behalf of any partners or shareholders eligible to be included in a composite return.
 - D) No return filed outside the Voluntary Compliance Program Period will qualify for relief under this Section. An unprocessable return filed during the Voluntary Compliance Program Period will qualify for relief under this Section only if a processable return is filed within 30 days after the Department has issued a notice to that taxpayer that the return filed was unprocessable.
 - E) Failure to correct an underreporting of tax that is not the result of participation in a tax avoidance transaction shall not preclude relief under this Section.
 - 2) Pay the full amount of the Eligible Liability, plus interest on the Eligible Liability.
 - A) Failure to pay any penalty or to pay any liability (or interest on such liability) other than the Eligible Liability shall not preclude relief under this Section.
 - B) If the Eligible Liability was eligible for amnesty under the Tax Delinquency Amnesty Act, interest that must be paid under this subsection (c)(2) shall be computed at 200% of the rate that would otherwise have been imposed under UPIA Section 3-2, as provided in UPIA Section 3-2(d).
 - C) In the case of a taxpayer who makes a good faith attempt to compute the correct amount of interest due on the Eligible Liability, attaches to its

amended return a schedule showing its computation of interest due on the Eligible Liability, and pays the amount so shown during the Voluntary Compliance Program Period, failure to pay the full amount of interest due shall not preclude relief under this Section if the full amount of interest determined by the Department to be due on the Eligible Liability is paid within 30 days after the Department has issued a Notice and Demand for the unpaid amount.

- D) No payment made under protest under Section 2a.1 of the State Officers and Employees Money Disposition Act [30 ILCS 230/2a.1] shall be considered a payment made during the Voluntary Compliance Program Period under this subsection (c)(2).
- 3) Make the election to participate under Voluntary Compliance without Appeal or Voluntary Compliance with Appeal.
- A) The election shall be made by checking the appropriate box on the Form VCP-1, Voluntary Compliance Participation Agreement.
 - B) Once made, the election may not be revoked.
 - C) A separate election shall be made for each taxable year for which the taxpayer chooses to participate in the Voluntary Compliance program.
 - D) No relief shall be allowed to any taxpayer for any taxable year for which the taxpayer fails to properly make the election in accordance with this subsection (c)(3).
- d) Effect of Electing Voluntary Compliance without Appeal. If a taxpayer properly elects Voluntary Compliance without Appeal:
- 1) No claim for refund or credit shall be allowed with respect to the Eligible Liability. The taxpayer's rights to claim a refund or credit for other amounts paid that are not attributable to the tax avoidance transaction shall not be affected by this election.
 - 2) The following penalties that are otherwise applicable to the Eligible Liability for such taxable year shall be abated:
 - A) The negligence penalty imposed under IITA Section 1002(a), including any doubling of the penalty under UPIA Section 3-5(d).
 - B) The fraud penalty imposed under IITA Section 1002(b), including any doubling of the penalty under UPIA Section 3-6(c).
 - C) The penalty for underpayment of tax imposed under IITA Section 1005(a), including any doubling of that penalty under UPIA Section 3-3(i).
 - D) The reportable transaction penalty imposed under IITA Section 1005(b).
 - E) The 100% interest penalty imposed under IITA Section 1005(c).
 - F) The underreporting penalty imposed under UPIA Section 3-3(b-15)(2).
 - G) In the case of an Eligible Liability reported on an original return filed during the Voluntary Compliance Program Period, the penalty for failure to pay estimated tax imposed by IITA Section 804(a), including any doubling of that penalty under UPIA Section 3-3(i).

- H) Because the Voluntary Compliance Program Period will expire before the date the first disclosure of participation in a reportable transaction could be due under IITA Section 501(b), filing of an amended return during the Voluntary Compliance Program Period reversing the tax benefits of a reportable transaction will avoid penalty under IITA Section 1001(b) for failure to disclose a reportable transaction.
 - 3) None of the penalties listed in this subsection (d)(2) shall be abated under the Voluntary Compliance Program to the extent imposed with respect to a liability assessed prior to October 15, 2004. No other penalties (including, but not limited to, any penalties for late payment of tax or underpayment of tax resulting from any underpayment other than the Eligible Liability) are abated or avoided merely by participation in the Voluntary Compliance Program. However, participation in the Voluntary Compliance Program will not affect any right the taxpayer would otherwise have to abatement of penalties or to contest the imposition of penalties.
 - 4) The Department shall not seek civil or criminal prosecution against the taxpayer for such taxable year with respect to tax avoidance transactions, except as otherwise provided in Tax Shelter Voluntary Compliance Law.
 - 5) A claim for a refund of the Eligible Liability by a taxpayer who has elected Voluntary Compliance without Appeal shall be denied, but filing such claim will not disqualify the taxpayer from participation in the Voluntary Compliance Program.
- e) Effect of Electing Voluntary Compliance with Appeal. If a taxpayer properly elects Voluntary Compliance with Appeal:
- 1) Any otherwise-allowable claim for refund or credit shall be allowed with respect to the Eligible Liability, provided that, notwithstanding IITA Section 909(e), the taxpayer may not file a written protest until after either of the following:
 - A) the date the Department issues a notice of denial; or
 - B) the earlier of:
 - i) the date which is 180 days after the date of a final determination by the Internal Revenue Service with respect to the transactions at issue;
 - ii) the date that is three years after the date the claim for refund was filed; or
 - iii) the date that is one year after full payment of all tax, including penalty and interest.
 - 2) Participation in the Voluntary Compliance Program with Appeal shall not affect any right the taxpayer otherwise has to claim a refund or credit or protest the denial of such claim for any amount paid other than the Eligible Liability.
 - 3) Penalties
 - A) The following penalties for the taxable year that are otherwise applicable to the Eligible Liability for such taxable year shall be abated:
 - i) The reportable transaction penalty imposed under IITA Section 1005(b).

- ii) The 100% interest penalty imposed under IITA Section 1005(c).
- B) Because the Voluntary Compliance Program Period will expire before the date the first disclosure of participation in a reportable transaction could be due under IITA Section 501(b), filing of an amended return during the Voluntary Compliance Program Period reversing the tax benefits of a reportable transaction will avoid penalty under IITA Section 1001(b) for failure to disclose a reportable transaction.
- C) Neither of the penalties listed in this subsection (e)(3)(A)(i) and (ii) shall be abated under the Voluntary Compliance Program to the extent imposed with respect to a liability assessed prior to October 15, 2004. No other penalties are abated or avoided merely by participation in the Voluntary Compliance Program. However, participation in the Voluntary Compliance Program will not affect any right the taxpayer would otherwise have to abatement of penalties or to contest the imposition of penalties.
- 4) The Department shall not seek civil or criminal prosecution against the taxpayer for such taxable year with respect to tax avoidance transactions, except as otherwise provided in the Tax Shelter Voluntary Compliance Law.
- f) Failure to Comply with All Requirements for Participation in the Voluntary Compliance Program. If the Department determines that a taxpayer who has been granted relief under this Section has failed to comply with all requirements of this Section, any penalties that had been abated shall be deemed assessed as of January 31, 2005, and shall be immediately due and collectible, provided that nothing in this subsection shall preclude abatement of a penalty for reasonable cause, if otherwise applicable, or deprive the taxpayer of any process otherwise available for seeking abatement of an assessed penalty.
- g) Participation in the Voluntary Compliance Program shall not be considered evidence that the taxpayer in fact engaged in a tax avoidance transaction.

(Source: Added at 29 Ill. Reg. 2420, effective January 28, 2005)